IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shiv Vinay Singhal Vs. State of Rajasthan & Ors.

S.B.Civil Writ Petition No.4583/2002
under Article 226 of the Constitution of India.

Date of Order : 09/02/2005

P R E S E N T

HON'BLE MR.JUSTICE PRAKASH TATIA

Mr. T. Gupta, for the petitioner.
Mr. L.R. Upadhyay, for State.
Dr. Pratisha Dave, for RFC.

Heard learned counsel for the parties.

Brief facts of the case are that one industrial unit M/s. Shiv Shakti Saw Mill situated in the District Bhilwara was defaulter in payment of loan amount of Rajasthan Financial Corporation, therefore, the possession of the property was taken over by the RFC and the unit was auctioned. The petitioner participated and gave his bid. The petitioner's bid was found highest and an agreement was executed between the petitioner and the RFC on 9.2.1995. The petitioner agreed to purchase the unit for a consideration of Rs.2,85,000/-. The petitioner did not

repay the due amount for which he agreed and he committed default in payment of installments of the said amount. The RFC initiated proceedings under Section 29 of the State Financial Corporation Act and took over the property again which was given to the petitioner vide agreement dated 9.2.1995. This property was sold by the RFC for a consideration of Rs.1,55,000/- only. The auction notice before transfer of the property was published in the newspaper on 13.11.1999.

It appears from the reply that the auction was completed in the year 2000.

After recovery of Rs.1,55,000/-, the RFC issued notice under Section 32-G of the SFC Act to the petitioner on 28.6.2001 for recovery of the remaining due amount. For this purpose, a certificate was issued by the Officer of the RFC, though no such certificate has been produced by the petitioner on the ground that certificate was not served upon the petitioner. The RFC issued a registered notice to the petitioner under Section 32-G of the SFC Act on 28.6.2001, copy of which is placed on record as Annexure-P/3. Again on 18.7.2001, another notice was issued to the petitioner by the RFC. The petitioner on 28.7.2001 submitted an objection with the RFC stating therein that some of the figures mentioned in the notice

are not legible. He also submitted that property in question has been sold on below the market rate. He submitted that the auction was conducted at the back of the petitioner. He demanded that a complete statement be provided to the petitioner about the account and thereafter, ultimately submitted that the sale of the land in question is conducted with ill-motive.

It appears that the matter was referred to the competent authority under the Rajasthan Land Revenue Act for recovery of the due amount from the petitioner and the Tehsildar, Bhilwara issued a notice to the petitioner on 18.9.2002 calling upon him to pay the amount of Rs.1,15,781/- within 15 days, otherwise the attachment warrant will be issued.

The petitioner is aggrieved against the demand notice dated 18.9.2002 issued under Section 229 of the Rajasthan Land Revenue Act, 1956 Annexure-P/6 in pursuance of order passed under Section 256 and 257 of the same Act of 1955 and against action of the respondents by which the respondents have initiated the proceedings under Section 32-G of the SFC Act. According to learned counsel for the petitioner, the respondent RFC had no jurisdiction to initiate proceedings under Section 32-G of the SFC Act, 1951 because of the reason that the proceedings can be initiated against the industrial

concern and the industrial concern has been defined in Sub-clause (c) of Section 2 of the Act of 1951. It is also submitted that since the RFC initiated the proceedings under Section 29 of the SFC Act and took over the possession of the property, therefore, the RFC could have initiated all the proceedings by adopting all the modes for recovery of the due amount from the petitioner simultaneously and once, the RFC initiated the proceedings under Section 29 only and did not choose to proceed with all other modes, then the RFC cannot proceed to recover the amount by invoking the powers under Section 32-G of the Act of 1951 now.

According to learned counsel for the petitioner, the petitioner is not the industrial unit. It is also submitted that when there are choice of one of the party to recover amount from defaulter through number of modes then the said party should choose all the modes same time, simultaneously and cannot initiating proceedings under one provision of law at one stage and thereafter under other provision of law at subsequent stage.

Learned counsel for the petitioner also submitted that the certificate has not been issued by the competent authority for recovery of the amount, therefore, the proceedings initiated by Tehsildar under Section 229 of the Act of 1956 is

illegal.

Learned counsel for the petitioner further submitted that the property in question has not been transferred to the petitioner at any point of time and petitioner did not avail any loan facility from the RFC, therefore also, the proceedings initiated against the petitioner is absolutely illegal.

The arguments raised by learned counsel for the petitioner based on various provision of law are raised for the first time in this writ petition. The petitioner by these objections has raised several disputed question of facts and only on these counts alone, the writ petition can be dismissed.

It is strange that the petitioner who purchased the industrial unit of which possession was taken over by the RFC by exercising power under Section 29 of the SFC Act which applies to the properties which are financed from the financial institution and took the possession of the property from RFC then on what ground the petitioner can say that the unit of the petitioner is not an industrial unit remained explained in entire arguments. If the unit which was taken over by the RFC from their defaulter M/s. Shiv Shakti Saw Mill was not an industrial unit, then petitioner could not have claimed any right on the basis of the agreement

which he executed in favour of the RFC on 9.2.1995 and took the possession of the unit.

The another strange argument raised by learned counsel for the petitioner is that the RFC should have initiated all the proceedings namely under Section 29 of the SFC Act, under Section 31 of the SFC Act, under Section 32-G of the SFC Act, 1951 and even by filing the suit for recovery of the due amount which the RFC is claiming against the petitioner.

The learned counsel for the petitioner submits that his view finds support from the judgment of the Hon'ble Supreme Court delivered in the case of A.P. State Financial Corporation Vs. M/s Gar Re-Rolling Mills and Another reported in 1994 (2)SCC 647 wherein the Supreme Court considered the doctrine of election in the matter of recovery of the loan amount. This Court is not convinced that the said judgment can be read as requested by learned counsel for the petitioner. It is also relevant to mention here that what can be the logic behind initiating the proceedings under all provisions of law for recovery of the single loan or due amount, has not been explained by the petitioner anywhere. How it will be advantageous to the petitioner or to the financial institution, is also neither explained nor there can be any reason for such a preposition for initiating

the proceedings against one defaulter.

The facts reveal in this case are that the petitioner himself treating the unit as industrial unit entered into agreement and purchased the property. The petitioner admitted his liability towards the RFC by entering into agreement Ex.P/1 dated 9.2.1995. The petitioner's loan amount was also opened by the RFC, copy of which is placed on record by the petitioner himself. The petitioner even did not had any objection when the petitioner's property was taken over by the RFC. Not only this, the petitioner's property was auctioned and petitioner when served with a notice dated 28.6.2001 by RFC, thereafter on 18.7.2001, he merely stated that the statement of account is not clear. He did not dispute the liability which has been shown in the notice dated 28.6.2001. The petitioner when served with the demand notice under Section 229 of the Rajasthan Land Revenue Act, 1956, then he straightway come before this Court under Article 227 of the Constitution of India. The RFC could have come to know about the remaining amount due in the petitioner only after the property which was taken over by the RFC is put to auction and before that, they could not know whether any amount remains due in the petitioner or not and, therefore, the RFC could not initiate any proceedings for recovery of the loan amount by adopting other modes.

In view of the above, the petitioner's contention that the proceedings were initiated not by the competent officer, has no reason to believe because of the simple reason that the petitioner has not disputed his liability before either RFC or before Tehsildar, Bhilwara who issued the notice.

The contention of learned counsel for the petitioner is that property in question has been sold in a low amount, than the market value, is also a disputed question of fact. There is no material available on record by which it can possibly be prima facie found that the property was sold for a low consideration disputing the fact that the petitioner himself purchased the property for a low consideration entered in the agreement for Rs.2,85,000/-.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

[Prakash Tatia],J.

Pd.